



## 10th IUCN Academy of Environmental Law Colloquium - Baltimore 2012

IUCN Academy of Environmental Law Research Committee

IUCN Environmental Law Centre – IUCN Commission on Environmental Law



### *Ecosystem Services, Economic Valuation, and Environmental Equity : complementary or contradictory ?*

*Ecosystem Services and Sustainable Developpement : creating an integrated Governance approach*

*Critical reflections on the new european strategy on biodiversity*

**Nathalie HERVE-FOURNEREAU**

Researcher at the National Centre of Scientific Research (CNRS), Institute of Law and European Studies  
(IODE, UMR 6262 CNRS, Rennes 1 University France)



RTP CNRS Droit, Biodiversité  
Services Ecosystémiques



## 10th IUCN Academy of Environmental Law Colloquium - Baltimore 2012



**Subject** : Assessing the interactions between Law, ecosystem services, and sustainable development through the prism of the ambivalent

**Field** : Critical reflexion on the new European Strategy on Biodiversity

### Overall questions:

How to prevent and regulate a strictly economic approach of ecosystem services ?

How to prevent and offset unfair approach at the different levels of european policies ?

How to prevent and sanction risks of regression of environmental european law which may be produced by the concept of ecosystem service ?

### Centrality of Governance topic

**Who** decide ? How to combine EU competencies, State sovereignty, Political authority, Democracy and Governance ?

**How** promoting new model of governance to ensure the conservation, the valorisation and the restoration of ecosystems in accordance to Values Plurality and Legal Foundations ?

And **Where** and for **Which Time** ?

### Introduction

#### European Strategic Context « Our life insurance, our natural capital » (COM 2011 – 244)

- Halting the loss of biodiversity and the degradation of ecosystem service by 2020 in the light of the transition towards a resource efficient, green and sustainable economy
  - Restoring 15% of degraded ecosystem by 2020 and promoting the use of green infrastructure thanks to the ecological engineering.
  - Supporting economic evaluation of the biodiversity and its multiple ecosystem services (TEEB) and taking into account the intrinsic and tangible values of biodiversity - Investing in the sustainable management of key resources and natural capital (COM (2011) 363, Towards Green Economy)
  - Strengthening Partnership for Biodiversity : the need of *full engagement and commitment of wide variety of stakeholders* » - Commission's 2010 campaign 'Biodiversity: "We are all in this together"'
- COM (2011) 363, Towards Green Economy and Better governance : « *Improving governance and private sector involvement* »





## 10th IUCN Academy of Environmental Law Colloquium - Baltimore 2012



### Hybrid concepts (B. Latour) : in research of Ariadne's thread

- Relational concept between the world of Nature and Societies, the world of Public government authorities and Societies
- Paradigm, prism, pabulum, placebo, oxymoron ?

### Ecosystem service

« Functions provided by a natural resource for another natural resource or for the public » (directive 2004/35/EC on environmental liability) « Benefits that people obtain from ecosystems (Millennium Ecosystem Assessment) **Unstable definition** – in complementary or competition with the concept of environmental services (for the FAO a part of Ecosystem services) – diversity of functions (pedagogic, scientific, normative...) = source of controversial debates

### Governance

Governance” means rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence » (COM (2001) 428 White Paper « European governance »)

Plurality of meaning and use of the governance concept intended to regulate diffuse, complexe, collective and uncertain phenomena as environmental issues : large diversity of actors, hybrid regulation, multi-level. **Major and controversial questions** of Democracy, Legitimacy, Authority and sovereignty, Political Choice, General interest and common patrimony

**WHO DECIDE ?** New Legitimacy, Economical Pragmatism : ideal, illusion, reality of political and legal functions and power

**The multiplicity of actors** : the question shared and differentiated responsibilities

- The recognition of the role of Civil society and Private sector

European strategy and legal rules in accordance with the Aarhus Convention, and national and international human rights

- From local to international level with very diversified actions

Internal and external EU policies -

**The distribution of competencies between legal authorities and economic private power**

- Principle of subsidiarity related to environmental policy : UE, governance laboratory
- Integrated approach and principle of integration: the crucial legal coherence
- Insufficient green diplomacy of EU and political will to be a real environmental international leader



### **Rethinking political choice, values plurality, legal rights/duties and social responsibilities**

- Environmental general interest : a responsibility to be re « shared » ?
  - Not one model « *equitable policy solutions tailored to each specific situation will need to be considered* » (COM (2010) 4)
  - Clarification the role of public authorities : Ecosystem service providers ? Ecosystem market organizer ? Problematic financial and technical capabilities
  - Necessity of a clear distribution of responsibilities and power of the actors (transparency, accountability, legitimacy, information, participation...) For example technical norms (ecological engineering, SCR), best practices (Katoomba group and PES)
- Who decide in fine ? Scientific experts (agencies, intergovernmental science-policy platform on Biodiversity and ecosystem services )
- Rethinking political and legal authority – normative and performative functions

**HOW ?** Commodification process, common patrimony, deliberative approach : The Eternal choice of instruments, procedures in the light of legal pluralism and democracy

**The complex combination of regulatory instruments and market-based instruments : efficiency, effectiveness and coherence**

- Reinforcing the implementation of legal conservation framework and promoting an ecosystemic approach (species, habitats and functions, towards a legal status of ordinary Biodiversité and green infrastructure)
- Enhancing the Financial subsidies (public and private) and reforming environmentally harmful subsidies
- The debatable process of Nature commodification and the good use of economic instruments

PES, Same remark concerning ecological substitutability and compensation - Question of the use of the contract and the risk of new fragmentation of the general public interest without a strong legal public framework



### **The reinforcement of democratic rights and legal procedures and institutions**

-Strengthen the openness, participation, accountability (principles of european governance) and the respect of Aarhus Convention by UE and its Member States

Why not the explicit recognition of right to environmental in EU Law (failure of UE Charter)

- The opportunity to diversify the tools for déliberative procedures (Spirit of Habermas) and for educational program in the field of biodiversity and ecosystem services

Why not use the Citizens' initiative in Lisbon Treaty. Several campaign and public consultation EU

- The opportunity to reinforce and extend the competencies of environmental euroepan agency (evaluation of value of biodiversity and ecosystem services, compensation ....) Why not an environmental Ombudsman ?



**WHERE ?** The crucial débat of the choice of Scale and Time : Resilience, Adaptation and Sustainable Solidarity

### **The interlinkages of local, regional and international scale**

The heterogeneous provision and distribution of ecosystem services and Benefits

The crucial question of the Relationship between ecological functions and ecosystem services : the risk of fragmented approach and ecosystem services compensation

The question of natural territory framework and sovereignty territory : creating ecosystem district interlinked with the other biogeographical regions (Natura Network)

### **The past, present and future : the great legal challenge**

The crucial question of past and initial ecological state (for example for ecosystem restoration or establishment of natural assets ) and state and vulnerability of the socio-ecosystem

The essential question of future for the maintenance of integrity of ecosystem : necessary beyond 5 years (as the contracts on agri-ecological measures of CAP) : who accept to take into account the long term and adapt the management ? The ecosystem services markets ?

All those questions related to governance invite lawyers to participate more and more to construct an interdisciplinary framework on ecosystem service : need of a strong legal status for ES (legal definition and qualification) and reinforcing the foundations of environmental law and the process of environmental integration into branches of Law

We have to keep in mind, that the concept of ecosystem services is an useful perspective to rethink the interactions human being and nature, but not the Only perspective.



Thank you for your attention



[www.iode.univ-rennes1.fr](http://www.iode.univ-rennes1.fr)

Nathalie.herve-fournereau@univ-rennes1.fr